

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

BLANE NEELY a/k/a WALTER MITCHELL)
)
)
Plaintiffs,) Civil Action No. 02-CV-3890
)
)
v.) (Civil Rights Complaint)
)
)
SIX CONTINENT'S HOTELS, SUBSIDIARY,)
HOLIDAY INN'S, INC, PRESIDENT/CEO,)
JOHN SWEETWOOD, NIGHT-MANAGER,)
ELLIOT JURIST, EX-PHILADELPHIA)
POLICEMAN, DAVID GROVE, ET AL.,)
)
Defendants.)
)

)

O R D E R

AND NOW, this ____ day of , 2002, upon consideration of plaintiff's Motion to Compel Production of Documents, and the Opposing Brief of defendant, Six Continents Hotels, Inc., it is hereby **ORDERED** and **DECREED** that plaintiff's Motion is **DENIED**.

BY THE COURT:

J.

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Defendants.)	
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**RESPONSE OF DEFENDANTS, SIX CONTINENTS HOTELS, INC., HOLIDAY INNS, INC.
AND JOHN SWEETWOOD IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Defendants, Six Continents Hotels, Inc., improperly styled as “Six Continent’s Hotels, Subsidiary, Holiday Inn’s Inc.” (hereafter “Six Continents”), Holiday Inns, Inc. and John Sweetwood, through their attorneys, Lavin, Coleman, O’Neil, Ricci, Finarelli & Gray, respectfully submit this Response and Brief in Opposition to Plaintiff’s Motion to Compel Production of Documents, and in support thereof, aver as follows:

1. The averments of paragraph (1) of plaintiff’s Motion constitute conclusions of law to which no response is required.
2. The averments of paragraph (2) of plaintiff’s Motion constitute conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that plaintiff has demonstrated “good cause shown” as alleged.

3. It is admitted that plaintiff has made such assertions. By way of further response, this Motion must be dismissed because plaintiff failed to include a certification pursuant to Local Civil Rule 21.1(f) and Federal Rule of Civil Procedure 37(a)(2)(A).

4. The averments of paragraph (4) of plaintiff's Motion constitute conclusions of law to which no response is required. By way of further response, plaintiff's allegations of "bad faith" are specifically denied because this action, "brought without counsel by a person in custody of the United States, a state, or a state subdivision", is exempt from Rule 26 Initial Disclosure. *F.R.C.P.* 26(a)(1)(E)(iii). Further, plaintiff's Motion to Compel was filed prior to the expiration of time within which defendants had to file an Answer to plaintiff's Complaint.

5. The averments of paragraph (5) of plaintiff's Motion constitute conclusions of law to which no response is required. By way of further response, it is specifically denied that plaintiff's exhibits establish anything more than defendants' continued good faith in their dealings with plaintiff.

WHEREFORE, Defendants respectfully request this Honorable Court to deny plaintiff's Motion to Compel Production of Documents.

Respectfully submitted,

LAVIN, COLEMAN, O'NEIL, RICCI, FINARELLI & GRAY

By: _____

Jennifer M. Brooks, Esquire
Attorney for Defendants,
Six Continents Hotel, Inc., Holiday Inns, Inc.
and John Sweetwood

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**BRIEF OF DEFENDANTS, SIX CONTINENTS HOTELS, INC., HOLIDAY INNS, INC.
AND JOHN SWEETWOOD IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

I. INTRODUCTION

Plaintiff filed his Amended Complaint on July 15, 2002. Defendants, Six Continents Hotels, Inc. ("Six Continents"), Holiday Inns, Inc. and John Sweetwood, waived service pursuant to Federal Rule of Civil Procedure 4(d) on July 19, 2002, making their Answer to plaintiff's Complaint due sixty (60) days from the date of service. Before defendants had a chance to answer his Amended Complaint, plaintiff filed a Motion to Compel, alleging "bad faith" on the part of defendants. Plaintiff's Motion is premature and procedurally incorrect. Plaintiff's Motion should be denied.

II. ARGUMENT

Plaintiff filed his Motion to Compel only 12 days after sending a letter request for information. Plaintiff provides no good cause for the relief requested, nor has he made any attempt, reasonable or otherwise, to resolve this issue prior to filing his Motion.

Initially, plaintiff alleges that Six Continents has demonstrated “bad faith” in its refusal to comply with initial disclosures”. *Motion at 2, ¶4.* This action is exempt from Rule 26 Initial Disclosure, as it was initiated by an incarcerated, *pro se* litigant. *F.R.C.P. 26(a)(1)(E)(iii).* Consequently, defendants have not defaulted upon any Initial Disclosure obligations.

Second, contrary to the requirements of F.R.C.P. 34, plaintiff never served a formal Request for Production of Documents upon defendants. Even if this Court were to find that plaintiff’s July 30, 2002 letter were deemed to be a formal request, plaintiff has moved to compel production prior to the expiration of 30 days after service of that Request. *F.R.C.P. 34(b).* Accordingly, plaintiff’s motion is premature, and therefore moot.

Plaintiff’s motion is also deficient because he failed provide a form of order to accompany his motion. Local Civil Rule 7.1(a). Even if such lack of compliance were not deemed sufficient to warrant denial due to plaintiff’s status as a *pro se* litigant¹, plaintiff lacks standing to bring this motion due to other deficiencies. He failed to certify that he made reasonable efforts to resolve this dispute before filing the Motion. *L. Civ. R. 21.1(f) and F.R.C.P. 37(a)(2)(A).* The failure to file a certificate of good faith alone is reason enough to deny plaintiff’s motion. *Tarkett, Inc. v. Congoleum Corp.*, 144 F.R.D. 282 (E.D. Pa. 1992)(Robreno). Strict application of the rule is supported by the Third Circuit. *Petrucelli v. Boehringer*, 46 F.3d 1298, 1311 n. 17 (3rd Cir. 1995). Since plaintiff has made no attempt to resolve this matter amicably before filing his Motion, plaintiff’s Motion must be denied.

Last, as explained to plaintiff in correspondence dated July 23, 2002, defendants have been

¹ Six Continents acknowledges that the mere lack of a form of order, alone, may be excused where a party is *pro se*. *Smith v. Lindenmeyr Paper Co.*, 1997 U.S. Dist. LEXIS 7916 (E.D. Pa. 1997)(Reed).

unable to locate *any* documents relevant to the hotel named in plaintiff's Complaint. Plaintiff's claims involve events that allegedly transpired in 1977. It is now August 2002 and the ten-year document retention policy of Six Continents does not provide for the preservation of documents over a quarter of a century old. Defendants have searched for the requested Licensing Agreement, but have been unable to locate it. As defendants cannot produce what they do not have, defendants respectfully request that plaintiff's Motion be denied.

III. CONCLUSION

Based on the foregoing facts and legal arguments, Six Continents respectfully requests that this Honorable Court deny plaintiff's motion.

Respectfully submitted,

LAVIN, COLEMAN, O'NEIL, RICCI, FINARELLI & GRAY

By: _____

Jennifer M. Brooks, Esquire
Attorney for Defendants,
Six Continents Hotel, Inc., Holiday Inns, Inc. and
John Sweetwood

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Response of Defendants, Six Continents Hotels, Inc., Holiday Inns, Inc. and John Sweetwood, in Opposition to Plaintiff's Motion to Compel Production of Documents*, was served on the date listed below via first class U.S. mail, postage pre-paid, on the following parties:

Blane Neely
AM-3262
P.O. Box 244
Graterford, PA 19426

LAVIN, COLEMAN, O'NEIL, RICCI, FINARELLI & GRAY

BY: _____
Jennifer M. Brooks, Esquire
Attorney for Defendants,
Six Continents Hotels, Inc., Holiday Inns, Inc.,
and John Sweetwood

Date: August 27, 2002

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